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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4030 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI M VYAS

Versus

DIRECTOR

Appearance:

MR PM THAKKAR for Petitioner

Mr R V Desai, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/12/2000

ORAL JUDGEMENT

The present petition has been filed by the petitioner above named, under Article 227 of the Constitution for appropriate writ, order or direction for

quashing and setting aside the impugned order at Annexure 'B' to the petition, which is an order dated 10.12.1991 recorded by the Gujarat Civil Service Tribunal, Gandhinagar, dismissing the appeal of the present petitioner, being Appeal No.318/90, which was against the order of removal of the petitioner from the Government service, dated 18.7.1990 recorded by the Director, Indian Medicines & Homeopathy System, Gandhinagar. The petitioner was initially appointed as Panchkarma Assistant Technician under the employment of the respondent. It appears from the record that a departmental enquiry was ordered against the petitioner and he was placed under suspension by order dated 13.10.1984. Ultimately, he was reinstated by order dated 12.3.1987 and he was posted at Bhuj in Kachchh District. The petitioner did not report at the aforesaid place of posting and ultimately, departmental enquiry was ordered against him. The departmental enquiry was ordered against him on the following charges:

i. That, the petitioner had arrived at the office of the respondent at Gandhinagar and had misbehaved with the officers and committed misconduct of serious nature.

ii. That, despite the fact that the petitioner was appointed and posted at Bhuj in Government Ayurvedic Hospital and though directions/instructions were issued to the petitioner for resuming his duty, the petitioner did not resume his duty and thereby shown negligence towards official duty.

iii. That, the petitioner was facing criminal case and yet that aspect of the case was not placed to the notice of the respondent.

iv. That the petitioner has acted as the President of Class IV Employees Union, without the permission of the Government.

A departmental enquiry was conducted against the petitioner for the aforesaid charges and, after the conclusion of the enquiry, a report was submitted by the Inquiry Officer, stating that charge no.1 was fully proved and the remaining facts were partly proved against the petitioner. On the strength of the said report, the disciplinary authority appears to have issued show cause notice to the petitioner. The petitioner submitted his

explanation to the said notice and the disciplinary authority, thereafter passed an order on 18.7.1990 holding the petitioner guilty of the aforesaid charges and directed that he be removed from service.

2. Feeling aggrieved by the said order of the respondent, the petitioner preferred appeal before the Gujarat Civil Service Tribunal (for short 'the tribunal'). The learned tribunal heard the petitioner and after considering the facts and circumstances of the case, as well as the records of the case, found that the petitioner had failed to satisfy the tribunal with respect to the merits of the matter and, therefore, by order dated 10.12.1991, the learned tribunal dismissed the said appeal of the present petitioner, Feeling dissatisfied with the order of the tribunal, the petitioner has preferred this petition before this court. It has been mainly contended that the findings recorded by the Inquiry Officer and confirmed by the disciplinary authority are not properly recorded and they are not borne out from the evidence before the Inquiry Officer. It is also contended that the charges levelled against the petitioner were not wholly proved and, the punishment of removal of the petitioner from service is too harsh. It is further contended that when the charges No.2, 3 and 4 have been partly held to be proved, then, it was not the case for passing extreme penalty of removal. That the order passed by the disciplinary authority is not a speaking order and the material placed before him have not been properly considered by him. On the whole, the aforesaid findings are illegal, erroneous and deserve to be quashed. It is, therefore, be prayed that the present petition be allowed and the aforesaid order of the respondent removing the petitioner from Government service be quashed and set aside and order be passed reinstating him in service.

3. On receipt of the aforesaid petition, rule was issued and the respondent has appeared in response to the service of rule. An afidavit has been filed at page 56 to oppose the present petition. Mr R V Desai, learned AGP appears for the respondent. I have heard the learned Advocates for the parties and have persused the papers.

4. The facts of the case are not much in dispute. The petitioner faces the aforesaid charges. He did not appear at the enquiry proceedings and, therefore, the enquiry proceedings proceeded ex-parte against the petitioner. Therefore, the witnesses examined, have not been cross-examined by the petitioner. Therefore, there no challenge to the evidence adduced before by the

Inquiry Officer by the presenting officer in the said enquiry proceedings. Therefore, the entire evidence remained unchallenged before the Inquiry Officer. A short question which arises in this petition is whether there were materials evidence before the Inquiry Officer for holding the petitioner guilty for the aforesaid charge.

5. The first charge levelled against the petitioner was that the petitioner misbehaved with the officers at the Directorate. For this charge, the Inquiry Officer has dealt with the matter at length. He has examined the witnesses at the relevant time and those witnesses have positively stated that the petitioner misbehaved and abused higher Officer. Since these witnesses have not been cross examined, the evidence remained unchallenged on record, and therefore, there was no difficulty for the Inquiry Officer in holding the petitioner guilty of the said charge.

6. It has been argued here that the words and language said to have been used by the petitioner at the aforesaid place and time are not on record and, therefore, it is not possible to ascertain if the words used were abusive in nature. It is required to be considered that this is not a criminal trial where the offence is required to be proved beyond doubt. Moreover, when the Inquiry Officer himself found that the words used were objectionable, then it would not be proper for this court exercise powers and jurisdiction under Article 227 of the Constitution of India, to differ from the finding of fact recorded by the Inquiry Officer, which has, in turn, been confirmed by the disciplinary authority by accepting the said report of the Inquiry Officer. It is more so, when the findings of those two authorities have been confirmed in appeal before the learned tribunal. Therefore, it is not possible to differ from the view taken by the Inquiry Officer and confirmed by the subsequent authority so far as these charges are concerned.

7. it is to be seen at internal page 7 of the report of the Inquiry Officer, it has been made clear that the words used by the petitioner were such, which could not be reproduced. This shows the gravity of the words and language used by the petitioner at the said place.

8. So far as the second charge is concerned, it is an admitted position that the petitioner was appointed and posted at Bhuj, after revocation of the order of suspension. It is an admitted position that the

petitioner did not resume his duty at Bhuj. Some attempts have been made to show that the petitioner had certain grounds and reasons for not resuming at Bhuj. He had made some representation for his retransfer at or around Ahmedabad. Let us take it that the petitioner had made such application for his transfer elsewhere, but this does not mean that the petitioner could not resume at Bhuj. This shows that during the long span of period, the petitioner had not submitted any application for leave, no certificate was submitted and no action was taken for regularization of his absence. Transfer is an incidence of service. When the person belongs to Government service, which is transferable from one place to another, the Government servant must join the service after keeping in mind that the position is transferable. At the same time, the department should also consider objectively as to where the person should be posted. Even if the petitioner was not satisfied or happy with the posting at Bhuj, it was his duty to join at Bhuj. If he was unable to resume, then, he should have submitted report or applications for leave which he has not done for a long period. Apart from the said position, it is clear that the petitioner was holding a technical post and, therefore, his absence from duty in a public hospital at Bhuj would substantially and prejudicially affect the services to be rendered to the patients in a Civil Hospital. His was an important service which could not be dispensed with lightly. Moreover, the Inquiry Officer has taken into consideration that there was some allegations that the petitioner brought pressure for his retransfer at or around Ahmedabad, but there was no evidence on the record on the said aspect and, therefore, that aspect of the charges against him cannot be treated to have been proved against the petitioner. This shows fairness on the part of the Inquiry Officer, though it was a matter of ex-parte proceedings.

9. So far as charge no.3 is concerned, it was mentioned that the petitioner was facing at least three criminal cases being No. 6020/84, 6024/84 and 6500/84. They relate to offences punishable under Sections 198, 476, 468, 420, 34 and 114 of the Indian Penal Code. Though the said criminal cases were pending against him he did not disclose the fact that those criminal prosecutions were filed against him. There is no dispute that those criminal cases were filed and were pending against the petitioner. It is not in dispute that the petitioner did not give intimation about the institution and pendency of the aforesaid criminal cases to the superior officers. The Inquiry Officer has recorded that as per rule 18 of the Gujarat Civil Services (Conduct)

Rules, 1971, a Government servant was required to inform his superior about institution of criminal cases, if any. The Inquiry Officer has recorded that though the aforesaid criminal cases were pending against him, the said intimation was not conveyed and there is no dispute on this aspect of the case. Undisputedly, all the said criminal cases were filed and pending against the petitioner and he did not inform the superior about the institution and pendency of the said cases. Thereby, it is a clear case of misconduct on the part of the petitioner. There cannot be any dispute about the same.

10. Same way, it is alleged against the petitioner that one more criminal case of Panchkoshi Division Police Station, Jamnagar, being Criminal Case No.80/84, was pending against the petitioner and the pendency of the said case was also not conveyed to the disciplinary authority. The Inquiry Officer has given finding that there was no material on record on this aspect of the case and, therefore, this aspect of the case has not been held to have been proved. This again shows fairness on the part of the Inquiry Officer in the ex-parte enquiry proceedings. Any way, when criminal case was pending against the petitioner and admittedly the intimation was not conveyed to the disciplinary authority and thereby the petitioner had admittedly exhibited misconduct in contravention of rule 18 of the said rules.

11. Though the fact that the charge was that the petitioner acted as President of Class IV employees Union without permission of the department and though the recognition of the said Union was cancelled, and the petitioner posed himself as Chairman of the said Union, then the charge is also partly held to have been proved and so far as the remaining charge is concerned, it is held by the Inquiry Officer that the department has not been able to show that it was necessary for the petitioner to obtain permission from the disciplinary authority for acting as President of such Association. It is, therefore, clear that the aforesaid charges have been held to have been proved against the petitioner and no material was produced before the authorities and it cannot be said that the Inquiry Officer has acted on a material which is not produced before him or that he recorded finding without any material and it, therefore, cannot be said that the finding and report of the Inquiry Officer is based on no evidence.

12. This court, is not sitting as court of appeal and, therefore, while exercising powers under Articles 226 and 227 of the Constitution, this court cannot go

into sufficiency of evidence. Any way, it cannot be said that the findings are based on no evidence. Once it is found that there was some evidence before the Inquiry Officer, it cannot be said that the findings were recorded illegally or without any material before him.

13. It is next contended that the disciplinary authority has not applied its mind. It is true that the disciplinary authority has not recorded elaborate order while removing the petitioner. However, when the disciplinary authority substantially agreed with the findings of the inquiry Officer, then in my opinion, it was not very much necessary for the disciplinary authority to record detailed finding on each charge separately, individually, distinctly and elaborately.

14. The disciplinary authority has recorded finding that he has considered the report of the Inquiry Officer carefully and after so doing, he agreed with the finding and reasonings of the Inquiry Officer. That he also considered the reply to the show cause notice submitted by the petitioner on 29.5.1990 and thereafter, he found that the report of the Inquiry Officer was acceptable and thereupon he passed the order of removal of the petitioner. Even on judicial pronouncement when the appellate authority substantially confirms the findings of the lower court then it is not mandatory for him to pass a detailed order with detailed reasons for confirming the findings of the lower authority. Here the disciplinary authority has totally agreed with the findings and reasonings of the Inquiry Officer and, therefore, he seems to have opted not to reiterate or repeat the findings and discussion recorded by the Inquiry Officer. In the premises, it cannot be said that it is a case of non-application of mind and that the order in question is not a speaking order. After all the order is an administrative one and, therefore, the Administrative Officer is not required to render a detailed reasoned judgment for accepting findings and reasonings of the Inquiry Officer. The order, therefore, cannot be said to be without application of mind. It could also not be said that the order is not a speaking one.

15. It has, then been contended that the learned Tribunal, on hearing and disposal of the appeal of the petitioner being appeal no.318/90 at page 38, has considered certain extraneous matters in holding that the petitioner is not a fit person to be reinstated in service. It is true that there is no charge against the

petitioner, on this aspect of the case. At the same time, when an argument is advanced that the petitioner should be reinstated in service then with a view to meet with the said argument, the learned tribunal has given reasons against the petitioner and while giving reasons the aforesaid observations have been made. The observations have been made without there being any charge or substance and the observations are not on record. The learned tribunal has considered the pros and cons of the case and thereafter it was found that the appellant was not a fit person to be reinstated. Therefore, that finding is only qua the prayer of the petitioner's reinstatement and not for any other purpose.

16. It has then, been argued here that the petitioner had 30 years of service and there was no previous misconduct or faults on his part. Therefore, this aspect can appropriately be considered for reinstatement and light penalty could have been imposed. In support of this contention, certain decisions have been relied upon by the learned Advocate for the petitioner.

16.1. Firstly, in the case of Ram Kishan v. Union of India (1995) (7) SC 43, the police official was found guilty of using abusive language against the superior. It has been observed in it that the nature of abusive language used by the appellant was not stated. It was held that the punishment of dismissal from service was held to be too harsh and disproportionate to the gravity of charge. It is true that in the present case also, the words are not on record but it has been specifically mentioned in the Inquiry Officers report that the words were such which ought not to be incorporated on paper and, therefore, the same were not actually mentioned. Moreover, this was not solitary charge against the petitioner and, therefore, the observations made in this judgment would not apply to the facts of the case before us.

16.2. The second decision can be found in the case of Bhimsingh Sardarsing v. District Superintendent of Police & Ors. (1982 GLH 610). There it has been observed that the decision on the question of penalty is not right, just, fair and reasonable and it is vitiated due to arbitrary exercise of powers. Therefore, the said order of punishment was quashed and set aside. It has also been observed that it can, therefore, be concluded and it is unsafe to retain the petitioner in service and maximum penalty is the only alternative. At the same time, the quantum of punishment will depend upon the

facts and circumstances of each case. It is difficult to have two cases, which may be totally identical or similar. The aforesaid decision makes ita clear that the disciplinary authority must objectively apply its mind for deciding the quantum of punishment to be awarded to the petitioner.

16.3. Almost a similar view was taken in Siddharth Mohanlal Sharma v. South Gujarat University (1982 GLR 233). There also it has been observed that the University is a State under Article 12 of the Constitution of India and it is required to act reasonably. There also the question of penalty has been considered. The question of adequate punishment in service-jurisprudence has also been considered and it is further observed that the disciplinary authority should indicate tentative punishment to be awarded to the delinquent with a view to give him some idea as to what is going to happen against him. In the present case, show cause notice was issued to the petitioner and the quantum of punishment proposed at that stage was conveyed to the petitioner. There is no dispute about the same.

16.4. In Mahabir Prasad v. State of U.P. (AIR 1970 SC 1302), it has been laid down that the order cancelling licence is of quasi-judicial nature and, therefore, it must be a speaking order. There is no dispute on this aspect of the case that the orders passed by the disciplinary authority should be a speaking order, but at the same time, as said above, the order of the disciplinary authority is based upon the report of the Inquiry Officer. The Inquiry Officer has dealt with the evidence of all the four charges separately and, there is a detailed discussion on each charge, as said above, which is found to be fair and reasonable. It is more so, when the entire evidence on record has remained unchallenged, since the petitioner did not choose to appear before him. Therefore, detailed discussions are there and after the said discussions, the Inquiry Officer found the petitioner guilty, the disciplinary authority has accepted the report in full, then in that case, these two reports and orders are required to be read together. If that is done, the order of the disciplinary authority cannot be said to be a non-speaking order.

17. It has to be considered that absence from duty for a particular period was not the only ground before the disciplinary authority and before the Inquiry Officer. It is a fact that the petitioner went to the Directorate and, there, he gave abuses to the higher officers. This is not a matter which can be lightly

taken. An attempt was made to show that he had gone there to enquire about subsistence allowance. The fact is otherwise. He had stated that he had gone for collecting the allowance. The allowance was drawn but the petitioner did not go to Bhuj for collecting his allowance. Therefore, the said amount was again deposited in Government treasury. This is the conduct reflected from the record of the case. Therefore, the defence of the petitioner that he had simply gone there for enquiring about his subsistence allowance appears to be incorrect on the face of the record itself. Even otherwise, on the one hand he remains absent without any leave report or information for a long time, on the other hand, he addressed abusive language and words to his superiors, three criminal cases were pending against him and he did not convey this fact to the disciplinary authority contrary to rule 18 of the Gujarat civil Services (Conduct) Rules, 1971. There were so many allegations against him and he remained indifferent even at the stage of enquiry and he did not attend the same despite the intimation being given to him. Therefore, it is not a case wherein the petitioner has been removed from the service on a single charge of long absence. The aforesaid punishment has been inflicted cumulatively. In that view of the matter, it cannot be said there was non-application of mind with respect to the quantum of punishment. A person in service since 10 to 12 years or more, flouted the rules, abused his superior, remained indifferent at all stages and also remained absent from duty, may be visited with extreme penalty also. Under the circumstance, the penalty of removal against the petitioner imposed by the disciplinary authority and confirmed in appeal before the learned tribunal, cannot be said to be excessive, harsh or disproportionate to the charges levelled against the petitioner. Ordinarily, it is not for this court to interfere with the quantum of punishment. but at the same time, this court can interfere with the said issue only if the punishment is so harsh as to hurt the conscience of the court or it is gravely disproportionate to the charges proved and levelled against him. This does not appear to be a case falling in that category and, therefore, I am of the view that this is not a fit case wherein this Court should interfere with respect to the quantum of punishment. There is no other point to be considered.

18. In the result, this

and consequently it deserves to be dismissed. This petition is accordingly dismissed. Rule discharged. No order as to costs.

15.12.2000 [D P Buch, J.]
msp